



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	41
<b>VAC Chapter Number:</b>	30
<b>Regulation Title:</b>	Board for Barbers and Cosmetology Rules and Regulations
<b>Action Title:</b>	Promulgating
<b>Date:</b>	December 6, 2002

Please refer to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts 2000, c.726,c1.3.; clarify and standardize requirements for licensure; provide for and ensure that health, sanitation standards, and safety are adequate in facilities where barbering and cosmetology are practiced; and extend the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment. The proposal also seeks to repeal existing Barber and Cosmetology regulations.

The proposed regulatory changes will also adjust licensing fees for regulants of the Board for Barbers and Cosmetology.

Sub-regulating the licensure and practice of waxing and haircutting was considered during the process of promulgating proposed regulations. The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

At the April 22, 2002 Board for Barbers and Cosmetology Meeting, the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

The accumulated cash balance and projected revenue to be collected from licensing fees will be inadequate to cover the board's operating costs by the close of the fiscal year 2002 as required by the Callahan Act, Virginia Code Section 54.1-113. Fee increases will allow the board to collect adequate revenue to repay the deficit that is projected for the current biennium, and support its ongoing expenses for upcoming operating cycles.

In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department's expenses are paid. The Board has no other sources of revenue from which to fund its operations. Fee increases are necessary for the Board to continue to perform its essential functions of licensing, investigation of complaints, and adjudication of disciplinary cases.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

The Board for Barbers and Cosmetology on October 21, 2002 adopted the Proposed Board for Barbers and Cosmetology Regulations as amended as Final Board for Barbers and Cosmetology Regulations.

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The proposed regulatory action to promulgate regulations governing the licensure and practice of barbering and cosmetology for the newly combined Board for Barbers and Cosmetology is mandated by Acts 2000,c.726,cl. 3.

- Section 54.1-201.5. of the Code of Virginia describes each regulatory boards power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The proposed regulatory action to adjust the fees is mandated by the following sections of the Code of Virginia. The Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

- Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

- Section 54.1-201.4 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department.

- Section 54.1-304.3 describes the power and duty of the Director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards and the Department shall be paid.

- Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- Pay expenses of each board and the Department from revenues collected;
- Establish fees adequate to provide sufficient revenue to pay expenses;
- Account for the revenues collected and expenses charged to each board;
- Revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly.
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- Reviews the actual and projected financial position of each board each biennium to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The intent of the proposed regulatory action is to promulgate regulations governing the licensure and practice of barbering and cosmetology. These regulations are necessary to ensure competence and integrity of all licensees and to ensure that the health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where barbering and cosmetology are practiced. Promulgation of these regulations for the newly combined Board for Barbers and Cosmetology is mandated by Acts 2000,c.726,c1.3.

The purpose of the fee adjustment is as follows:

The intent of the proposed changes in regulations is to adjust licensing fees for regulants of the Board for Barbers and Cosmetology. The Board must establish fees adequate to support the costs of board operations and a proportionate share of the Department's operations. By the beginning of the 2002-04 biennium, fees will no longer provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, renewals, examination fees, and other licensing fees. The Department is self-supporting, and

must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenue collected on behalf of the boards funds the Department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The proposed regulations will change the VAC Chapter Number to 18 VAC 41-30-10 et seq. These regulations will contain provisions for both barbering and cosmetology as directed by Acts 2000,c.726, cl.3.; standardize and clarify requirements for licensure; ensure competency and integrity of all licensees; provide for and ensure that health and sanitation standards are adequate in facilities where these services are provided; and extend the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The proposed regulatory action is an advantage to the public in that it will provide clear and effective regulations to ensure competency and integrity and prevent deceptive or misleading practices by practitioners of barbering and cosmetology. The new provision to extend the temporary permit from 30 to 45 days is an advantage to regulants and the revised sanitation and safety standards are to the advantage of the public. The new provision pertaining to licensure by endorsement clarifies and standardizes the requirements for applicants to obtain a license in Virginia based on a current license held in any other state or jurisdiction of the United States. There are no disadvantages to the public or the Commonwealth with regards to the combining of the regulations governing the licensure and practice of barbering and cosmetology.

The primary issue for the proposed fee adjustment is the Department's statutory requirement to comply with the Callahan Act in order to administer this regulatory program in a cost effective manner.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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To support Governor Mark R. Warner's initiative to implement the use of technology to improve service delivery and efficiency, in 18 VAC 41-30-10. the definition of 'Affidavit' was deleted and in 18 VAC 41-30-20.3. the word 'affidavit' was deleted and the word 'statement' was added.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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No public comments were received during the proposed public comment period.

The following public comments and agency responses are based on the proposed text for the regulations at the time of the NOIRA comment period. The provision to create a subregulated category for a wax technician was subsequently deleted in order to promulgate regulations to meet statutory mandates pertaining to the newly combined Board and fee adjustments.

**Commenter:** Lieng P. Tran  
7404 Vandenburg Court  
Lanham, Maryland 20706  
Letter dated July 17, 2001

**Summary of Comment:** Ms. Tran is a licensed Nail Technician and Esthetician in Maryland who is on the Board's PPG list. She suggests that the Board establish a license strictly for waxing services and/or revise the current Nail Technician license to be a Nail and Waxing Technician license. Ms. Tran states that the estimated cost of obtaining a cosmetology license in Virginia, so that she could perform nail and waxing services in this state, is approximately \$6000. She believes this cost and the additional, unrelated training prevents skilled individuals from performing waxing as a service in Virginia.

**Agency Response:** The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

**Commenter:** Barbara Hensley, Instructor and Co-Owner  
ATI Hollywood The School of Hair Design  
3535-D Franklin Road S.W.  
Roanoke, Virginia 24014-2255  
(540)343-0153  
Letter dated July 26, 2001

**Summary of Comment:** Ms. Hensley believes that the sub-regulation of haircutting and waxing would create both a health and safety issue to the public and an unnecessary burden on cosmetology schools. She believes that cosmetology schools would incur a “great deal of expense to implement this as it would be a separate program.”

Ms. Hensley also believes that haircutters and wax technicians would practice outside their scope of practice without the proper training. Ms. Hensley is concerned that salon insurance would increase.

**Agency Response:** The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting. At the April 22, 2002 Board for Barbers and Cosmetology Meeting, the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

**Commenter:** Bonnie Bender, Director, Staunton School of Cosmetology  
128 E. Beverley Street  
Staunton, Virginia 24401  
(540) 885-0808  
Letter dated August 9, 2001

**Summary of Comment:** Agrees that the standards for health, sanitary and safety practices of licensees should be reviewed and revised as needed.

In the context of increased fees, Ms. Bender suggests that the Board “review the operating practices in the Richmond Office.”

Ms. Bender also suggests that the Board review the temporary permit application process. She believes the forms take too long to be completed. She believes the temporary permit should be issued for 60 days, rather than 30, so that students can work and support their families until an exam date.

Ms. Bender additionally states that she believes students do not receive the necessary admission card and exam information until the day before the State Board. She believes there have been instances where the student was not notified at all.

Ms. Bender suggests that waxing be provided by “educated technicians.”

Ms. Bender believes it would be deceptive to lead a student to believe that they could be trained to be a skilled haircutter in a period of six hundred hours. She states that teaching a student a “crash course in haircutting will not benefit the Cosmetology Industry or the standards we have tried to maintain.”

**Agency Response:** The Board, through the language of its proposed regulations, will revise the safety and sanitary standards for the practices of barbering, cosmetology, nail technicians, and wax technicians. The Board believes that the new regulatory language provides the necessary protections for the citizens of the Commonwealth of Virginia.

The Board, through the language of its proposed regulations, will be increasing the length of a temporary permit from thirty (30) days to forty-five (45) days. Exam personnel has indicated that forty-five days will amply cover the period of time from the date of the examination through the applicant’s receipt of his/her exam scores.

The application deadline has been increased from two weeks to three weeks prior to the examination to increase the time frame for examination notification. Specific information pertaining to examination notification will be requested for research of this issue.

At the April 22, 2002 Board for Barbers and Cosmetology Meeting the Board approved the consideration of licensure of haircutting during the next regulatory review that the Board will begin at the September 9, 2002 Board for Barbers and Cosmetology meeting.

The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting.

**Commenter:** Judy Madden, Business Consultant  
6301 Franconia Commons Drive  
Alexandria, VA 22310  
(703) 719-9541  
E-mail: judim@cavtel.net  
Letter dated August 23, 2001

**Summary of Comment:** Requests that the Board look more closely at the statutory inclusion of “waxing, tweezing” in the statutory definition of the work on human hair by a cosmetologist. Ms. Madden suggests that most cosmetologists do not receive training in skin care sufficient to address the risk to the public of bad skin reactions to the processes of waxing and tweezing.

**Agency Response:** The 2002 General Assembly passed HB337 that enact the licensure of Wax Technician. At the June 3, 2002 board for Barbers and Cosmetology Meeting, the Board established qualifications pertaining to the requirements for waiver of the examination as stated in Section 54.1-703.1. Waiver of examination; wax technicians. Code of Virginia. The Board will begin promulgation of regulation pertaining to licensure of wax technicians at the September 9, 2002 Board for Barbers and Cosmetology Meeting. Specific information to training time dedicated to skin care will be requested for research of this issue.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts 2000, c.726,cl.3. and clarify and standardize requirements for licensure. All substantive changes to existing sections of the currently separate regulations are noted below.

- **18 VAC 41-30-10.** the definition of Direct supervision is being added to the regulations to clarify the requirement of supervision when services are being performed by a temporary permit holder or registered apprentice.

The definition of ‘Affidavit’ was deleted to support Governor Mark R. Warner’s initiative to implement the use of technology to improve service delivery and efficiency.

- **18 VAC 41-30-20.** is being added to the regulations to clarify the eligibility requirements for applicants with a record of criminal convictions.
- **18 VAC 41-30-20.3** the word ‘affidavit’ was deleted and the word ‘statement’ was added to support Governor Mark R. Warner’s initiative to implement the use of technology to improve service delivery and efficiency.
- **18 VAC 55-22-30.** clarifies and standardizes the requirements for license by endorsement for barbers, cosmetologists and nail technicians. The current regulatory sections that address license by endorsement for barbers, 18 VAC 40-20-120, and cosmetologists and nail technicians, 18 VAC 55-22-100, vary significantly.

- **18 VAC 41-30-50.** establishes that the educational credit shall be based on completed performances and that applicants trained in a Virginia State Institution or the United States armed forces are eligible for examination. The current sections of regulation pertaining to exceptions to training requirements for Barbers, 18 VAC 40-20-50, and Cosmetology, 18 VAC 55-22-70, provided an arbitrary 50% educational credit for Virginia licensees with less than two years work experience when enrolling or transferring for training in either practice. In addition, the current regulations do not specify that applicants receiving training from a Virginia State Institution or the United States armed forces are eligible for examination.
- **18 VAC 41-30-60.D.** clarifies that the examination fees shall consist of the administrative expenses of the department ensuing from the board's examination procedures and contract charges and that the exam service contracts shall be established in compliance with the Virginia Public Procurement Act. This subsection also establishes that any examination fee shall not exceed a cost of \$225.00 to the candidate.
- **18 VAC 41-30-90.** extends the temporary work permit period from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment and specifies that no applicant shall be issued more than one permit:
- **18 VAC 41-30-100.** clarifies and standardizes the requirements for instructor certifications for barbers, cosmetologists and nail technicians. The current regulatory sections that address requirements for instructor certification for barbers, 18 VAC 40-20-100, cosmetologists, 18 VAC 55-22-110, and nail technicians, 18 VAC 55-22-120, vary significantly.
- **18 VAC 41-30-140.** adjusts, combines, and standardizes the current sections of the regulation pertaining to fees for barbers, 18 VAC 40-20-20, 18 VAC 40-20-110 through 18 VAC 40-20-200, and cosmetologists and nail technicians, 18 VAC 55-22-160, 18 VAC 55-22-170, 18 VAC 55-22-270, 18 VAC 55-22-300, and 18 VAC 55-22-310.
- **18 VAC 41-30-200.** clarifies that the area where classroom instruction is given and the area where practical instruction and services are provided must be separate areas.
- **18 VAC 41-30-270.A. – J.** amends, combines and clarifies the current sanitation requirements for barbers, 18 VAC 40-20-290, and cosmetologists and nail technicians, 18 VAC 55-22-340, to create detailed sanitation and safety standards for shops, salons, and schools. The new language in 18 VAC 41-30-270.D. stipulates that compliance with these rules does not confer compliance with other requirements set forth by federal, state and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

This section is divided into the following subsections: 18 VAC 41-30-270.A. – Sanitation and safety standards; 18 VAC 41-30-270.B. - Disinfection and storage of implements; 18 VAC 41-30-270.C. – General sanitation and safety requirements; 18 VAC 41-30-270.D. – Equipment sanitation; 18 VAC 41-30-270.E. – Articles, tools and products; 18 VAC 41-30-270.F. – Chemical storage and emergency information; and 18 VAC 41-30-270.G. – Client health guidelines. 18 VAC 41-30-270.H. stipulates that all licensee and temporary permit

holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry. 18 VAC 41-30-270.I. establishes that all shops, salons, schools and facilities shall immediately report the results of any inspection by the Virginia Department of Health. 18 VAC 41-30-270.J. stipulates that all shops, salons, schools and facilities shall maintain a self-inspection form on file to be updated annually and maintained for 5 years to be reviewed at the board's discretion.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulatory actions are not anticipated to have any significant impact on Virginia's families.